**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.2139 OF 2006
a/w Civil Application No.1754 of 2006

Anil Gangadhar Mandlik, .. Petitioner

Vs

Dr Arun Gangadhar Mandlik, .. Respondent.

Mr P.M.Arjunwadkar, for the petitioner.
Mr Rajesh Datar, for the applicants in
Civil Application No.1754 of 2006.

**CORAM : D.B.BHOSALE,J.**
**DATE : 20.09.2006**

**PC:**

1. Heard the learned counsel for the parties.

2. This petition is directed against the following order dated 19.12.2005.

> "It has come on record that respondent no.3 has sold the land, pending the appeal. Thus, the appeal is now infructuous. Appellant's adv.Miss Salvi stated on previous date that necessary orders be passed. None present today. Hence the appeal is disposed off. No order as to costs."

3. Mr Arjunwadkar, learned counsel for the petitioner, invited my attention to the plaint as also the application at Exhibit-5, which give the descriptions of the suit properties. There are four

properties involved in the present suit, out of which, admittedly, the property at sr.no.3, i.e. 16-A-1, Hissa No.1-E, admeasuring 29.8 Ares, has been transferred to one Milind Mohan Salaye and Anand Moreshwar Biwalkar by a registered sale deed on 2.3.2005. Insofar as the other properties are concerned, no such rights in favour of third parties are created so far and,therefore, the observations in the aforesaid order that the appeal has become infructuous in view of the sale of the land by respondent no.3 pending appeal, is not correct. He further points out that he can maintain the appeal in respect of the other three properties mentioned in the plaint. From perusal of the order impugned, Exhibit-5-application and the plaint, it is clear that the appeal did not become infructuous as observed by the learned Judge since the other three properties are still in possession of all the members of the family. The suit is for partition. The petitioner apprehends that other members of the family may create third party rights in respect of remaining three properties and hence he desires to prosecute Civil Misc Appeal No.6/05. I am satisfied that the appeal court has passed the impugned order without taking into consideration that third party rights in respect of three properties are not yet created. In the circumstances, the writ petition is allowed. The order impugned is quashed and

set aside. Misc.Civil Appeal No.6 of 2005 stands restored to file. The appeal court shall proceed to hear the same on merits in accordance with law expeditiously. It is open for the third parties, viz. Milind Mohan Salaye and Anand Moreshwar Biwalkar,to file appropriate application for their impleadment in the suit and in Misc. Civil Appeal No.6 of 2005. It is open for the petitioner to file appropriate application either in the suit or in Misc.Civil Appeal No.6 of 2005 seeking appropriate reliefs against Milind Mohan Salaye and Anand Moreshwar Biwalkar in respect of the property at sr.no.3.

. In view of the order passed in the writ petition, the civil application stands disposed of.

(D.B.BHOSALE,J.)